

# 5 things you should know about 'family law'

## 1. Trust and Company Assets

Assets owned by a company or trust linked to a party may be considered as assets of that party. Similarly, when assessing a party's income for child support or spousal maintenance purposes, income may not be limited to a party's taxable income, but may extend to include income earned by a company or trust with which the party is associated, or include that person's capacity to earn income.

## 2. Who Children Live With

In children's cases, there is no automatic presumption that a child should live with either parent. The primary consideration is what is best for the child, taking into account competing proposals for housing, schooling, time with the other parent and family members, and the child's relationship with each parent. Often this is assessed by looking at the past. Arrangements for children immediately after separation can be extremely important where there is an argument about what those arrangements should be in the longer term.

## 3. Assets Post Separation

Wealth or assets obtained by one party after separation are not necessarily excluded from the pool of assets to be divided between separated parties. It may be in one party's best interests to legally resolve a financial settlement with their partner as quickly as possible after separation to exclude and protect future assets from a claim under the Family Law Act.

## 4. Custody and Access

The terms "custody" and "access" have not been used in family law since 1996. It is incorrect to refer to "a custodial parent" or "access with children". The correct description refers to a person with whom a child lives, a person with whom a child spends time, or a person with whom a child communicates.

## 5. Pre and Post Nuptial Agreements

A private written agreement between parties, in relation to either children or financial matters is not necessarily legally binding. The absence of a legally binding agreement risks one party making a claim for division of property years after the parties have separated. Any agreed property settlement should be reflected in either a binding financial agreement [a pre or post nuptial agreement] or Court orders made by consent to ensure it has legal effect.